

MONTANA LEGISLATIVE HISTORY

Chapter 84 19 99

Bill H _____ S 32

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 1-19 ☒ c

2-4 ☒ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 1-7 ☒ c

_____ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

SB 32 Introduced by Grimes

LC0315 Drafter: MacMaster

Provide That Consent of a Victim of Sexual Assault or Sexual Intercourse Without Consent Is Ineffective If the Victim Is Incarcerated in an Adult or Juvenile Correctional, Detention, or Treatment Facility and the Perpetrator Is an Employee, Contractor, or Volunteer of the Facility and Has Supervisory or Disciplinary Authority over the Victim, Unless the Act Is Part of a Lawful Search;...

By Request of Department of Corrections

12/07	Introduced		
12/22	Referred to Judiciary		
1/04	1st Reading		
1/06	Fiscal Note Requested		
1/07	Hearing		
1/07	Committee Executive Action--Bill Passed	9	0
1/07	Committee Report--Bill Passed		
1/11	Fiscal Note Received		
1/11	Fiscal Note Signed		
1/11	2nd Reading Passed	34	16
1/12	Fiscal Note Printed		
1/12	3rd Reading Passed	39	11
	Transmitted to House		
1/13	Referred to Judiciary		
1/19	Hearing		
1/22	Tabled in Committee		
2/05	Taken from Table in Committee		
2/05	Committee Executive Action--Bill Concurred as Amended	14	6
2/05	Committee Report--Bill Concurred as Amended		
2/09	2nd Reading Concurred	85	15
2/09	Reconsidered Previous Action;		
	Remains in 2nd Reading Process		
3/04	2nd Reading Concurred as Amended	91	6
3/06	3rd Reading Concurred	93	6
	Returned to Senate with Amendments		
3/09	2nd Reading House Amendments Concurred	50	0
3/10	3rd Reading Passed as Amended by House	50	0
3/10	Sent to Enrolling		
3/11	Returned from Enrolling		
3/12	Signed by President		
3/13	Signed by Speaker		
3/15	Transmitted to Governor		
3/16	Signed by Governor		
3/17	Chapter Number Assigned		
	Chapter Number 84		
	Effective Date: 10/01/1999 - All Sections		

SB 33 Introduced by F. Thomas

LC0339 Drafter: Lane

Generally Revise Laws Governing Prisons and Prisoners;...

By Request of Department of Corrections

12/07	Introduced
12/22	Referred to Judiciary

SENATE BILL NO. 32

INTRODUCED BY GRIMES D

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CONSENT OF A VICTIM OF SEXUAL ASSAULT OR SEXUAL INTERCOURSE WITHOUT CONSENT IS INEFFECTIVE IF THE VICTIM IS INCARCERATED IN AN ADULT OR JUVENILE CORRECTIONAL, DETENTION, OR TREATMENT FACILITY AND THE PERPETRATOR HAS SUPERVISORY OR DISCIPLINARY AUTHORITY OVER THE VICTIM, UNLESS THE ACT IS PART OF A LAWFUL SEARCH; AND AMENDING SECTIONS 45-5-501 AND 45-5-502, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

(a) the victim is compelled to submit by force against ~~himself~~ the victim or another; or

(b) the victim is incapable of consent because ~~he~~ the victim is:

(i) mentally defective or incapacitated;

(ii) physically helpless; ~~or~~

(iii) less than 16 years old; or

(iv) incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.

(2) As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat."

Section 2. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual

1 contact without consent commits the offense of sexual assault.

2 (2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned
3 the county jail for a term not to exceed 6 months, or both.

4 (3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim
5 or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault,
6 offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of
7 less than 2 years or more than 100 years and may be fined not more than \$50,000.

8 (4) An act "in the course of committing sexual assault" includes an attempt to commit
9 offense or flight after the attempt or commission.

10 (5) Consent is ineffective under this section if:

11 (a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility
12 and the perpetrator has supervisory or disciplinary authority over the victim, unless the act is part of
13 lawful search; or if

14 (b) the victim is less than 14 years old and the offender is 3 or more years older than the victim
15

- END -

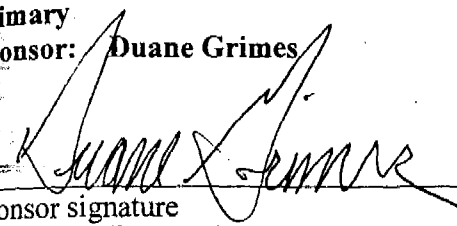
FISCAL NOTE

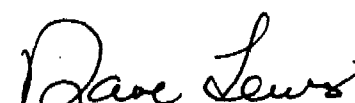
Bill #: SB0032

Title: Crime for sexual contact with incarcerated person

Primary Sponsor: Duane Grimes

Status: As introduced

 11/11/99
Sponsor signature Date

 1-11-99
Dave Lewis, Budget Director Date

Fiscal Summary

	<u>FY2000</u> <u>Difference</u>	<u>FY2001</u> <u>Difference</u>
Expenditures:	\$0	\$0
Revenue:	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. This bill would allow prosecution of Department of Corrections (DOC) personnel who have any sexual contact with an inmate. Most of the contact would be misdemeanor sexual contact; this would have no fiscal impact on the DOC.
2. Occasionally, sexual contact with an inmate would include intercourse; this contact would be a felony. Since these offenders would not have a prior record, they would most likely be sentenced to a probationary sentence. The fiscal impact of this bill is estimated to be minimal.

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (S) Judiciary -

04:57 PM

-
- SB 27** **SPONSOR:** Hertel, John **SHORT TITLE:** Revise telemarketing registration and fraud prevention act
 REFERRED ON: 12/22/1998
 FINAL DISPOSITION 04/20/1999 Chapter Number Assigned
-
- SB 32** **SPONSOR:** Grimes, Duane **SHORT TITLE:** Crime for sexual contact with incarcerated person
 BY REQUEST OF: Department Of Corrections
 REFERRED ON: 12/22/1998 **HEARD ON:** 01/07/1999
 EXECUTIVE ACTION: 01/07/1999 Bill Passed -- VOTE: 9 - 0
 FINAL DISPOSITION 03/17/1999 Chapter Number Assigned
-
- SB 33** **SPONSOR:** Thomas, Fred **SHORT TITLE:** Generally revise laws governing prisons & prisoners
 BY REQUEST OF: Department Of Corrections
 REFERRED ON: 12/22/1998 **HEARD ON:** 01/08/1999 (S) Discussed in Committee ON: 01/14/1999
 EXECUTIVE ACTION: 01/19/1999 Bill Passed as Amended -- VOTE: 9 - 0
 FINAL DISPOSITION 04/29/1999 Chapter Number Assigned
-
- SB 36** **SPONSOR:** Keenan, Bob **SHORT TITLE:** Malpractice immunity for free health care clinics
 REFERRED ON: 01/19/1999 **HEARD ON:** 01/27/1999
 EXECUTIVE ACTION: 02/01/1999 Bill Passed as Amended -- VOTE: 8 - 1
 FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- SB 41** **SPONSOR:** Taylor, Mike **SHORT TITLE:** Term limits for judges
 REFERRED ON: 12/22/1998
 FINAL DISPOSITION 03/01/1999 (S) Missed Deadline for General Bill Transmittal
-
- SB 42** **SPONSOR:** Taylor, Mike **SHORT TITLE:** Change supreme court justice's term of office
 REFERRED ON: 12/22/1998
 FINAL DISPOSITION 03/01/1999 (S) Missed Deadline for General Bill Transmittal
-
- SB 54** **SPONSOR:** Halligan, Mike **SHORT TITLE:** Revise youth court act
 BY REQUEST OF: Department Of Corrections
 REFERRED ON: 12/22/1998 **HEARD ON:** 01/06/1999
 EXECUTIVE ACTION: 01/14/1999 Bill Passed as Amended -- VOTE: 9 - 0
 FINAL DISPOSITION 05/04/1999 Chapter Number Assigned
-

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 7, 1999
at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Services Division

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 63, 1/7/1999; SB 32,
1/7/1999; SB 112, 1/7/1999
Executive Action: SB 32

HEARING ON SB 63

Sponsor: SEN. LINDA NELSON, SD 49, Medicine Lake

Proponents:

Cathy Kendall, Board of Crime Control
Beth Baker, Department of Justice

HEARING ON SB 32

Sponsor: SENATOR DUANE GRIMES, SD 20, Clancy

Proponents:

Jo Acton, Montana Women's Prison
Diana Leibinger-Koch, Department of Corrections
Tim Shank, Montana Police Protection Assoc.
Kate Cholena, Montana Women's Lobby

Opponents: None

Opening Statements By the Sponsor:

SENATOR DUANE GRIMES, SD 20, Clancy, presented SB 32. It prohibits employees who have disciplinary authority over incarcerated inmates from having sexual contact with them. This will help with security and the human rights issue that is involved.

Proponents Testimony:

Jo Acton, Montana Women's Prison, spoke in support of SB 32.
EXHIBIT(2)

Diana Leibinger-Koch, Department of Corrections, rose in support of SB 32. EXHIBIT(3)

{Tape : 1; Side : A; Approx. Time Counter : 9:32 a.m.}

Tim Shank, Montana Police Protection Assoc. said his association supports SB 32.

Kate Cholena, Montana Women's Lobby, said they also support this bill.

Opponents Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. GRIMES closed on SB 32.

HEARING ON SB 112

Sponsor: SENATOR EVE FRANKLIN, SD 21, Great Falls

SENATOR BARTLETT said it is because of the establishment of the registry that anyone convicted has to give a sample. **Mr. Bullock** said that is correct. In order to collect this sample, law enforcement could always get a body search like they do to get fingerprints

Closing by Sponsor:

SENATOR FRANKLIN said the swab is a Q-tip and this would help the liability issue. This bill will strengthen in terms of technology and help in criminal investigation. The question is how do they force someone to give a body part sample, and this is an issue that needs to be worked on, but might not be able to be addressed in this bill. The Department of Corrections will absorb this into their budget and there will be no fiscal impact.

EXECUTIVE ACTION ON SB 32

Motion: **SEN. DOHERTY** moved **SB 32 DO PASS.**

Discussion:

SENATOR BARTLETT said they continue to criminalize additional types of behavior and establish sentences for those crimes and sentencing statutes are hard to understand and apply. Prisons get more and more crowded and society has to deal with it.

CHAIRMAN GROSFIELD said they are dealing with someone who is already in the system and there could be a fiscal impact if additional sentencing is required. Every time they make a crime it costs money.

SENATOR HALLIGAN asked if there are counselors at the Montana State Prison that do not have disciplinary authority. There could also be persons coming in from the outside such as psychiatrists etc. that may not be covered under this bill. **SENATOR GRIMES** said he would work on this.

Vote: Motion carried unanimously.

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) Judiciary -

04:00 PM

-
- SB 32** **SPONSOR:** Grimes, Duane **SHORT TITLE:** Crime for sexual contact with incarcerated person
 BY REQUEST OF: Department Of Corrections
 REFERRED ON: 01/13/1999 **HEARD ON:** 01/19/1999
 EXECUTIVE ACTION: 02/05/1999 Bill Concurred as Amended -- VOTE: 14 - 6
 TABLED ON: 01/22/1999
 FINAL DISPOSITION 03/17/1999 Chapter Number Assigned
-
- SB 33** **SPONSOR:** Thomas, Fred **SHORT TITLE:** Generally revise laws governing prisons & prisoners
 BY REQUEST OF: Department Of Corrections
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/09/1999
 EXECUTIVE ACTION: 03/26/1999 Bill Concurred -- VOTE: 10 - 9
 TABLED ON: 03/19/1999
 FINAL DISPOSITION 04/29/1999 Chapter Number Assigned
-
- SB 36** **SPONSOR:** Keenan, Bob **SHORT TITLE:** Malpractice immunity for free health care clinics
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/02/1999
 EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 15 - 2
 TABLED ON: 03/08/1999
 FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- SB 54** **SPONSOR:** Halligan, Mike **SHORT TITLE:** Revise youth court act
 BY REQUEST OF: Department Of Corrections
 REFERRED ON: 01/20/1999 **HEARD ON:** 01/26/1999
 EXECUTIVE ACTION: 03/04/1999 Bill Concurred as Amended -- VOTE: 16 - 3
 FINAL DISPOSITION 05/04/1999 Chapter Number Assigned
-
- SB 60** **SPONSOR:** Halligan, Mike **SHORT TITLE:** Allow District Court Judges to appoint standing masters
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/04/1999
 EXECUTIVE ACTION: 03/08/1999 Bill Concurred as Amended -- VOTE: 15 - 3
 FINAL DISPOSITION 03/25/1999 Chapter Number Assigned
-

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on January 19, 1999
at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Aubyn A. Curtiss (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: 1/19/1999- HB 214, HB 235, SB 6, SB 32,
Date Posted: 1/14/1999
Executive Action: HB's 54, 213 and 28 Tabled

{Tape : 2; Side : A; Approx. Time Counter : 55 - 64}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 64 - 175}

Closing by Sponsor:

Sen. Hargrove made closing statements.

{Tape : 2; Side : A; Approx. Time Counter : 175 - 216}

HEARING ON SB 32

Sponsor:

Sen. Grimes presented SB 32.

{Tape : 2; Side : A; Approx. Time Counter : 216 - 271}

Proponents:

Joan Akton, Warden- Montana State Women's Prison

{Tape : 2; Side : A; Approx. Time Counter : 271 - 302}

Diane Libeinger-Cook, Rep. from Alberton

{Tape : 2; Side : A; Approx. Time Counter : 302 - 442}

Jerry Williams, Montana Police Protective Association

{Tape : 2; Side : A; Approx. Time Counter : 442 - 459}

Bob Anderson, Montana Sheriffs and Peace Officers Association

{Tape : 2; Side : A; Approx. Time Counter : 459 - 468}

Opponents:

None

Informational Testimony:

Mike Mahoney, Warden-Montana State Prison

{Tape : 2; Side : A; Approx. Time Counter : 468 - 476}

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 476 - 550}{Tape : 2;
Side : B; Approx. Time Counter : 0 - 263}

Closing by Sponsor:

Sen. Grimes made closing statements.

{Tape : 2; Side : B; Approx. Time Counter : 263 - 302}

EXECUTIVE ACTION ON HB 213

Motion/Vote: Rep. McGee moved that HB 213 be tabled. Motion carried 12-7 with P. Clark, Eggers, Facey, Gutsche, Hurdle, Williams, and Wyatt voting no.

{Tape : 2; Side : B; Approx. Time Counter : 302 - 363}

EXECUTIVE ACTION ON HB 115

Motion/Vote: Rep. McGee moved that HB 115 be amended. Motion carried 18-1 with Wyatt voting no.

EXHIBIT(10)

Motion/Vote: Rep. McGee moved that HB 115 be passed as amended. Motion carried 17-2 with Eggers and Jore voting no.

{Tape : 2; Side : B; Approx. Time Counter : 363 - 550}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 375}

EXECUTIVE ACTION ON HB 106

Motion/Vote: Rep. Facey moved HB 106. Motion carried 18-1 with Wyatt voting no.

After much discussion HB 106 was postponed until a later date.

{Tape : 3; Side : A; Approx. Time Counter : 375 - 550}

EXHIBIT(11)

EXHIBIT(12)

EXECUTIVE ACTION ON HB 53

Motion/Vote: Rep. McGee moved that HB 53 be amended. Motion carried unanimously.

Motion/Vote: Rep. Ahner moved that HB 53 be passed as amended.

Motion carried 13-6 with Facey, Gallus, Gutsche, Hurdle, Williams, and Wyatt voting no.

{Tape : 3; Side : B; Approx. Time Counter : 0 - 133}

EXHIBIT(13)

EXECUTIVE ACTION ON HB 54

Executive Action: SB 32-Be Concurred in as
amended; SB 8-Be concurred in
as amended

HEARING ON SB 213

Sponsor:

Sen. Grosfield made opening remarks.

{Tape : 1; Side : A; Approx. Time Counter : 33 - 163}

EXHIBIT(1)

EXHIBIT(2)

Proponents:

Laurie Koutnik, Christian Coalition of Montana

{Tape : 1; Side : A; Approx. Time Counter : 163 - 207}

EXHIBIT(3)

Arletta Randash, Eagle Forum

{Tape : 1; Side : A; Approx. Time Counter : 207 - 216}

EXHIBIT(4)

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 216 - 453}

{Tape : 1; Side : B; Approx. Time Counter : 0 - 446}

Sen. Grosfield in his response to a question discusses the intent of the bill.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 11}

Sen. Grosfield in his response to a question discussed the intent to include homosexual lifestyle; "stated for the record".

{Tape : 2; Side : A; Approx. Time Counter : 63 - 68}

EXHIBIT(5)

{Tape : 2; Side : A; Approx. Time Counter : 68 - 498}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 19}

Closing by Sponsor:

Sen. Grosfield made closing statements.

{Tape : 2; Side : B; Approx. Time Counter : 19 - 77}

EXECUTIVE ACTION ON HB 374

Deferred; wait for federal opinion.

{Tape : 2; Side : B; Approx. Time Counter : 77 - 91}

EXECUTIVE ACTION ON SB 8

Motion: REP. YOUNKIN moved that SB 8 BE CONCURRED IN.

Motion/Vote: REP. WYATT moved that SB 8 BE AMENDED. Motion failed 8-12 with Ahner, Anderson, Curtiss, Jore, Kitzenberg, McGee, Molnar, Noennig, Shockley, Soft, Wyatt, and Younkin voting aye.

Motion/Vote: REP. SHOCKLEY moved that SB 8 BE AMENDED. Motion carried unanimously.

REP. SHOCKLEY moved that AMENDMENTS BE SEGREGATED.
REP. SHOCKLEY later withdrew AMENDMENTS 2 & 3.

Vote: Motion that SB 8 BE CONCURRED IN AS AMENDED carried 16-4 with Gutsche, Hurdle, Jore, and Williams voting no.

EXECUTIVE ACTION ON SB 32

Motion: REP. ANDERSON moved SB 32 RECONSIDER & BRING OFF THE TABLE.

Motion: REP. ANDERSON moved that SB 32 BE CONCURRED IN.

Motion/Vote: REP. ANDERSON moved that SB 32 BE AMENDED. Motion carried 18-1. REP. MCGEE voted no and REP. CURTISS absent during the vote.

Motion: REP. ANDERSON moved that SB 32 BE CONCURRED IN AS AMENDED.

Motion: REP. HURDLE moved that SB 32 BE AMENDED.
Motion failed by a voice vote.

Motion/Vote: REP. ANDERSON moved that SB 32 BE CONCURRED IN AS AMENDED. Motion carried 14-6 with Curtiss, Eggers, Jore, McGee, Molnar, and Shockley voting no.

{Tape : 2; Side : B; Approx. Time Counter : 91 - 550}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 550}

{Tape : 3; Side : B; Approx. Time Counter : 0 - 550}

{Tape : 4; Side : A; Approx. Time Counter : 0 - 109}

Meeting adjourned.